

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924021-URC001
Claimant:	American Pollution Control Corporation
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$78,354.58
Action Taken:	Offer in the amount of \$77,044.58

EXECUTIVE SUMMARY:

On October 9, 2023, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a ruptured storage tank that discharged approximately 3.74660 gallons of crude oil at the Timbalier Bay Central Facility in Lafourche County, Louisiana.² Extex Operating Company (“Extex” or “RP”), owner and operator of the tank and facility responsible for the oil spill, was identified as the Responsible Party (RP),³ as defined by the Oil Pollution Act of 1990.⁴ Extex contacted Forefront Emergency Management, the facility’s, Qualified Individual (“Forefront” or “QI”) confirming that the release created a sheen measuring 1000’ long by 200’ wide both rainbow and dark in color, releasing oil directly into the Gulf of Mexico; a navigable waterway of the United States.⁵

Extex personnel placed plumber’s plugs in the drain and deployed 250’ of containment boom around the tank section.⁶ American Pollution Control Corporation (“AMPOL” or “Claimant”) was activated by Forefront on October 9, 2023, to mitigate the release.⁷ AMPOL deployed additional containment boom for secondary protection,⁸ and began using absorbents to recover product on the day of the spill.⁹ AMPOL returned to the incident location to continue cleanup

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated with this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² National Response Center Report #1381242 dated October 9, 2023.

³ See, Email from FOSC to NPFC dated January 30, 2024.

⁴ 33 U.S.C. § 2701 (32).

⁵ Email from FOSC to NPFC dated January 30, 2023. See, Forefront Spill Response Notification Form pg. 1 of 2.

⁶ Email from FOSC to NPFC dated January 30, 2023. See, Written Notification from Forefront to Department of Public Safety & Corrections pg. 3 of 3.

⁷ Email from FOSC to NPFC dated January 30, 2023. See, Forefront Spill Response Notification Form pg. 1 of 2.

⁸ Email from FOSC to NPFC dated January 30, 2023. See, Written Notification from Forefront to Department of Public Safety & Corrections pg. 3 of 3.

⁹ AMPOL Original Claim Submission dated January 23, 2024. See, Invoice 0015342-IN pg. 1 of 8

operations between October 10, 2023 and October 23, 2023.¹⁰ On November 20, 2023, a roll-off box was used to recover 25 cubic yards of oily debris,¹¹ and a third-party contractor was hired to remove and dispose of the debris.¹²

The USCG Marine Safety Unit Houma (“MSU Houma” or “FOSC”) is the Federal On-Scene Coordinator (“FOSC”) based on the location of this incident. The FOSC determined that the incident posed a substantial threat of discharge of oil into a navigable waterway of the United States, and determined all actions taken by the AMPOL were consistent with the National Contingency Plan (“NCP”).¹³

On January 23, 2024, AMPOL presented its removal costs claim to the National Pollution Funds Center (“NPFC”) for \$78,354.58.¹⁴ The NPFC requested explanation of the difference in claimed total versus costs supported by evidence.¹⁵ On January 24, 2024, AMPOL revised its sum certain to \$77,759.58.¹⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$77,044.58 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 9, 2023, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a ruptured storage tank that discharged approximately 3.74660 gallons of crude oil at the Timbalier Bay Central Facility in Lafourche County, Louisiana.¹⁷

The incident was caused when the tank developed two rust holes allowing oil to leak directly into the Gulf of Mexico; a navigable waterway of the United States.¹⁸ Extex contacted Forefront Emergency Management, the facility’s, Qualified Individual (“Forefront” or “QI”) confirming that the release created a sheen measuring 1000’ long by 200’ wide both rainbow and dark in color.¹⁹ MSU Houma was notified of the spill incident and confirmed the cause of rupture, discharge and estimated total.²⁰

Responsible Party

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act

¹⁰ *Id.* pages. 1-2 of 8.

¹¹ Email from AMPOL to the NPFC dated January 24, 2024. *See*, Invoice 0015682-IN pages 1-2 of 5.

¹² *Id.* *See*, pg. 3 of 5 for Mike’s Filter & Supply Invoice 155405.

¹³ Email from FOSCR to NPFC dated January 30, 2024.

¹⁴ AMPOL Original Claim Submission received January 23, 2024.

¹⁵ Email from NPFC to AMPOL dated January 24, 2024.

¹⁶ Email from AMPOL to NPFC dated January 24, 2024.

¹⁷ National Response Center Report #1381242 dated October 9, 2023.

¹⁸ Email from AMPOL to NPFC dated January 24, 2024. *See*, the revised page 1 of OSLTF form.

¹⁹ Email from FOSC to NPFC dated January 30, 2023. *See*, Forefront Spill Response Notification Form pg. 1 of 2.

²⁰ Email from FOSC to NPFC dated January 30, 2024.

of 1990 (OPA).²¹ OPA defines the Responsible Party (RP) for a discharge from an offshore facility as “the person or entity that owned or operated such facility.”²² Extex Operating Company (“Extex” or “RP”), is the confirmed owner/operator of the facility when the spill incident occurred.²³ As such, Extex is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²⁴

On January 24, 2024, the NPFC issued an RP Notification Letter to Extex Operating Company via email.²⁵ An RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of a discharge of oil to navigable waters of the United States.

Recovery Operations

Extex personnel placed plumber’s plugs in the drain and deployed 250’ of containment boom around the tank section.²⁶ American Pollution Control Corporation (“AMPOL” or “Claimant”) was activated by Forefront on October 9, 2023, to mitigate the spilled crude oil.²⁷ AMPOL deployed additional containment boom for secondary protection.²⁸ AMPOL began using absorbents to recover product on the day of the spill.²⁹

AMPOL returned to the incident location and continued cleanup operations between October 10, 2023, and October 23, 2023.³⁰ On November 20, 2023, a roll-off box was used to recover 25 cubic yards of oily debris,³¹ and a third-party contractor was hired to remove and dispose of the debris.³²

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)³³ require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.³⁴

²¹ An “offshore facility” means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.” 33 U.S.C. § 2701(22).

²² 33 U.S.C. § 2701(26), 33 U.S.C. § 2701(32).

²³ AMPOL Original Claim Submission received January 23, 2024.

²⁴ 33 U.S.C. § 2701(32).

²⁵ NPFC RP Notification Letter dated January 24, 2024.

²⁶ Email from FOSC to NPFC dated January 30, 2023. *See*, Written Notification from Forefront to Department of Public Safety & Corrections pg. 3 of 3.

²⁷ Email from FOSC to NPFC dated January 30, 2023. *See*, Forefront Spill Response Notification Form pg. 1 of 2.

²⁸ Email from FOSC to NPFC dated January 30, 2023. *See*, Written Notification from Forefront to Department of Public Safety & Corrections pg. 3 of 3.

²⁹ AMPOL Original Claim Submission dated January 23, 2024. *See*, Invoice 0015342-IN pg. 1 of 8.

³⁰ *Id.* pages. 1-2 of 8.

³¹ Email from AMPOL to the NPFC dated January 24, 2024. *See*, Invoice 0015682-IN pages 1-2 of 5.

³² *Id.* *See*, pg. 3 of 5 for Mike’s Filter & Supply Invoice 155405.

³³ 33 U.S.C. § 2701 *et seq.*

³⁴ 33 CFR 136.103.

AMPOL presented all costs subject of this claim to Extex, identified as invoice # 0015342-IN dated October 25, 2023³⁵, and invoice # 0015682-IN dated December 13, 2023.³⁶ The NPFC issued a RP Notification letter to Extex dated January 24, 2024.³⁷ A RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement of uncompensated removal costs or damages incurred as result of the incident in which the recipient is the identified or suspected RP.³⁸

Extex has not provided any proof of payment for any costs submitted with AMPOL's claim or any indication of an intention to work with AMPOL to settle the claimed costs.³⁹

III. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.⁴⁰ On January 23, 2024, AMPOL presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$78,354.58.⁴¹ The claim included AMPOL's signed OSLTF form, a copy of invoice #0015342-IN, with associated computerized daily work tickets, and a duplicate copy of the invoice.⁴²

On January 24, 2024, the NPFC requested explanation of the difference between claimed total costs and costs supported by evidence.⁴³ On January 24, 2024, AMPOL resubmitted its removal costs claim to the NPFC for the revised sum of \$77,759.58.⁴⁴ The claim included a copy of invoice #0015682-IN, with all supporting daily work tickets.⁴⁵

On January 25, 2024, the NPFC requested additional information from AMPOL.⁴⁶ On February 16, 2024, AMPOL provided a series of Supervisor logs, signed timesheets and job safety analysis forms affiliated with cleanup of the October 9, 2023, incident, a Master Service Agreement with the RP signed by AMPOL on June 7, 2023, a copy of invoice #00015342-IN along with associated computerized daily work tickets, a copy of Mike's Filter & Supply invoice #155405 with the associated waste manifest and route truck work receipt, AMPOL's 2023 rate schedule, a Word document explaining the reasons for gaps in cleanup operations and a document noting the weather history for Southeast Louisiana on the dates of cleanup.⁴⁷ On

³⁵ AMPOL Original Claim Submission received January 23, 2024. *See*, AMPOL Invoice 0015342-IN pg. 1 of 8.

³⁶ Email from AMPOL to the NPFC dated January 24, 2024. *See*, Invoice 0015682-IN pg. 1 of 5.

³⁷ *See*, NPFC letter to Extex emailed on January 24, 2024.

³⁸ *See*, RP Notification Letter dated January 24, 2024.

³⁹ On February 28, 2024, the NPFC emailed Extex inquiring if the RP had any intention of working with the Claimant to settle costs submitted with AMPOL's claim. The RP stated no knowledge of any intention to settle costs with AMPOL and forwarded the email to their Chief Finance Officer. No further feedback was sent by Extex in reply to the inquiry. *See*, Email from NPFC to Extex dated February 28, 2024, and Email from Extex to NPFC dated February 28, 2024.

⁴⁰ 33 CFR 136.103.

⁴¹ AMPOL Original Claim Submission received January 23, 2024.

⁴² *Id.* with Attachments.

⁴³ Email from NPFC to AMPOL dated January 24, 2024.

⁴⁴ Email from AMPOL to NPFC dated January 24, 2024.

⁴⁵ *Id.* with Attachments.

⁴⁶ Email from NPFC to AMPOL, dated January 25, 2024.

⁴⁷ *See*, emails from AMPOL to NPFC, dated February 16, 2024, with Attachments.

March 6, 2024, AMPOL submitted a copy of an electronic check to Mike's Filter & Supply as proof of payment to the contractor.⁴⁸

The RP did not settle the claim within 90 days from presentment.⁴⁹ As such, the NPFC adjudicated the claim.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁵⁰ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.⁵¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁵² If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.⁵³ An RP's liability is strict, joint, and several.⁵⁴ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."⁵⁵ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an

⁴⁸ Email from AMPOL to NPFC, dated March 6, 2024. *See*, Electronic Check 095055 pg. 1 of 1.

⁴⁹ 33 CFR 136.103(c).

⁵⁰ 33 CFR Part 136.

⁵¹ *See, e.g., Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

⁵² *See, e.g., Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

⁵³ 33 U.S.C. § 2702(a).

⁵⁴ *See*, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁵⁵ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

incident.”⁵⁶ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”⁵⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁵⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁵⁹ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁶⁰

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.⁶¹
- (d) That the removal costs were uncompensated and reasonable.⁶²

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by AMPOL herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁶³

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$77,044.58, while \$715.00 is denied for the following reasons:⁶⁴

1. AMPOL is seeking a total of \$350.00 for costs associated with the use of PPE for 10 personnel for October 10, 2023.⁶⁵ Evidence does not specify the PPE utilized by

⁵⁶ 33 U.S.C. § 2701(31).

⁵⁷ 33 U.S.C. § 2701(30).

⁵⁸ *See generally*, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁵⁹ 33 CFR Part 136.

⁶⁰ 33 CFR 136.105.

⁶¹ After analyzing the incident and the actions taken by AMPOL, the FOSC opined that the response actions undertaken by AMPOL were consistent with the National Contingency Plan. *See*, Email from USCG MSU Houma to the NPFC dated January 30, 2024.

⁶² 33 CFR 136.203; 33 CFR 136.205.

⁶³ Email from FOSCR to NPFC dated January 30, 2024.

⁶⁴ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

⁶⁵ AMPOL Original Claim Submission received January 23, 2024. *See*, AMPOL Invoice 0015342-IN computerized daily ticket for October 10, 2023, pg. 4 of 8.

personnel. However, AMPOL's supervisor logs indicate cleanup in an environment which would entail the use of protective outfits and gloves.⁶⁶ The approved rate is \$25.00 per protective suit and \$10.00 per set of gloves,⁶⁷ totaling \$35.00 per individual. However, the Time Sign Sheet indicates only 8 personnel were on-scene for October 10, 2023, not the 10 personnel as claimed.⁶⁸ Costs are approved at the supported rate of \$35.00 per individual, for the 8 personnel on-scene; totaling \$280.00. Total costs denied = \$70.00.⁶⁹

2. AMPOL is seeking a total of \$3,490.00 for personnel costs for October 19, 2023.⁷⁰ Evidence supports the on-scene attendance of the 4 personnel attributed to the costs claimed. However, AMPOL's supervisor logs for October 19, 2023, supports work including travel to and from the spill location for a maximum of 10 hours,⁷¹ not the 12 hours claimed for 3 of the 4 personnel.⁷² Costs are approved at the supported rates for hours claimed equal to or lesser than 10 hours, totaling \$2,845.00. Total costs denied = \$645.00.⁷³

Overall Denied Costs: \$715.00⁷⁴

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, AMPOL's request for uncompensated removal costs is approved in the amount of **\$77,044.58**.

This determination is a settlement offer,⁷⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁷⁶ The NPFC reserves the right to revoke a

⁶⁶ Email from AMPOL to NPFC, dated February 16, 2024. *See*, Daily Supervisor Log in document titled, Backup Paperwork 10-9 and 10-10, pg. 10 of 10.

⁶⁷ Email from AMPOL to NPFC, dated February 16, 2024. *See*, 2023 AMPOL Rate Schedule pg. 5 of 6.

⁶⁸ Email from AMPOL to NPFC, dated February 16, 2024. *See*, Time Sign Sheet in document titled, Backup Paperwork 10-9 and 10-10, pg. 6 of 10.

⁶⁹ *See*, Enclosure 3.

⁷⁰ AMPOL Original Claim Submission received January 23, 2024. *See*, AMPOL Invoice 0015342-IN computerized daily ticket for October 19, 2023, pg. 6 of 8.

⁷¹ Email from AMPOL to NPFC, dated February 16, 2024. *See*, Daily Supervisor Log in document titled, Sup Log for 10-19, 10-20 and 10-23, pg. 1 of 3.

⁷² AMPOL Original Claim Submission received January 23, 2024. *See*, AMPOL Invoice 0015342-IN computerized daily report for October 19, 2023, pg. 6 of 8.

⁷³ *See*, Enclosure 3.

⁷⁴ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

⁷⁵ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

⁷⁶ 33 CFR 136.115(b).

settlement offer at any time prior to acceptance.⁷⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *3/15/2024*

Supervisor Action: *Offer approved*

⁷⁷ *Id.*